

**In re: EMILA W. ZERBINI, AN INDIVIDUAL d/b/a MAYA AND HER
FRENCH POODLES, A SOLE PROPRIETORSHIP.
AWA Docket No. 01-0031.
Decision Without Hearing By Reason Of Default.
Filed November 8, 2001.**

AWA – Default – Failure to answer.

Colleen A. Carroll, for Complainant.
Respondent, Pro se.

Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*)(the “Act”), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents willfully violated the Act.

On April 25, 2001, the Hearing Clerk sent to the respondent, by certified mail, copies of the complaint and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151). The packages were mailed to the respondent’s current mailing address, which respondent had provided to complainant. The respondent was informed in the accompanying letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation. Respondent actually received the complaint on May 4, 2001.

The respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are all admitted by the respondent’s failure to file an answer, are adopted and set forth herein as Findings of Fact. This decision and order is issued pursuant to section 1.139 of the Rules of Practice.

FINDINGS OF FACT

1. Emilia W. Zerbini is an individual whose mailing address is 2311 Juniper Place, Sarasota, Florida 34329. At all times material hereto, said respondent was engaged in business as Maya and Her French Poodles, a sole proprietorship located at the same mailing address, and was operating as an exhibitor as that term is defined in the Act.

2. Respondent Emilia W. Zerbini was previously issued Animal Welfare Act license 58-C-488, which license was terminated on December 4, 1998, after respondent failed to submit a license renewal form.

3. On the following dates, respondent Emilia W. Zerbini, doing business as Maya and Her French Poodles, operated as an “exhibitor” for Circus Maximus, Inc., Webb City, Missouri, as that term is defined in the Regulations, without having

obtained a license from the Secretary to do so:

- a. January 28, 29, 30, and 31, 1999, at Fort Wayne, Indiana;
- b. April 13 and 14, 1999, at Fort Pierce, Florida;
- c. April 15, 16, 17, and 18, 1999, at Palm Beach, Florida;
- d. April 22, 23, 24, and 25, 1999, at Rockford, Illinois;
- e. April 29 and 30, and May 1 and 2, 1999, at Springfield, Massachusetts;
- f. September 18 and 19, 1999, at Columbus, Georgia;
- g. September 23, 24, 25 and 26, 1999, at Providence, Rhode Island;
- h. October 1, 2 and 3, 1999, at Worcester, Massachusetts;
- i. October 7, 8, 9, and 10, 1999, at Chattanooga, Tennessee;
- j. October 15, 16, and 17, 1999, at Carthage, Missouri;
- k. October 20, 1999, at Asheville, North Carolina;
- l. October 21, 1999, at Winston-Salem, North Carolina; and
- m. May 15, 16, 17, 18, 19, 20, and 21, 2000, in Wilmington, Massachusetts.

4. On the following dates, respondent Emilia W. Zerbini, doing business as Maya and Her French Poodles, operated as an “exhibitor” for Yankee Doodle Circus, also known as Naughton Attractions, Greenville, New York, as that term is defined in the Regulations, without having obtained a license from the Secretary to do so:

- a. February 5, 2000, at Miller Place, New York;
- b. February 6, 2000, at Port Jefferson Station, New York;
- c. February 7, 2000, at Brooklyn, New York;
- d. February 8, 2000, at Greenwood Lake, New York;
- e. February 9, 2000, at Ringwood, New Jersey;
- f. February 10, 2000, at Bloomfield, New Jersey;
- g. February 12, 2000, at Mahopac, New York;
- h. February 13, 2000, at Riverhead, New York;
- i. February 19, 2000, at Smithtown, New York;
- j. February 20, 2000, at Manorville, New York;
- k. February 23 and 24, 2000, at Long Beach, New York;
- l. February 26, 2000, at North Plainfield, New Jersey;
- m. February 27, 2000, at New Brunswick, New Jersey;
- n. February 28, 2000, at Belleville, New Jersey;
- o. March 2, 2000, at Seaford, New York;
- p. March 3, 2000, at Levittown, New York;
- q. March 4, 2000, at North Babylon, New York;
- r. March 5, 2000, at Amityville, New York;
- s. March 6, 2000, at Sag Harbor, New York;
- t. March 9, 2000, at Ryebrook, New York;
- u. March 10, 2000, at Brooklyn, New York;
- v. March 11, 2000, at Hawthorne, New Jersey;
- w. March 12, 2000, at Little Falls, New Jersey;

- x. March 13, 2000, at Jeffersonville, New York;
- y. March 14, 2000, at Margaretville, New York;
- z. March 15, 2000, at Beacon, New York;
- aa. March 16, 2000, at Afton, New York;
- bb. March 17, 2000, at Elmwood Park, New Jersey;
- cc. March 18, 2000, at Howell, New Jersey;
- dd. March 19, 2000, at Lynhurst, New Jersey;
- ee. March 23, 2000, at Englewood, New Jersey;
- ff. March 24, 2000, at Norwood, Massachusetts;
- gg. March 25, 2000, at Middletown, Connecticut;
- hh. March 26, 2000, at Holbrook, Massachusetts;
- ii. March 28, 2000, at Wells River, Vermont;
- jj. March 29, 2000, at Hardwick, Vermont;
- kk. March 30, 2000, at Springfield, Vermont;
- ll. March 31, 2000, at Natick, Massachusetts;
- mm. April 1, 2000, at Weston, Connecticut;
- nn. April 5, 2000, at Westport, Massachusetts;
- oo. April 6, 2000, at Woonsocket, Rhode Island;
- pp. April 7, 2000, at Winchendon, Massachusetts;
- qq. April 8, 2000, at Hartford, Connecticut;
- rr. April 9, 2000, at Jack Heights, New York;
- ss. April 10, 2000, at Brooklyn, New York;
- tt. April 11, 2000, at Yeadon, Pennsylvania;
- uu. April 12, 2000, at Washingtonville, Pennsylvania;
- vv. April 13, 2000, at Glen Mills, Pennsylvania;
- ww. April 14, 2000, at Delran, New Jersey;
- xx. April 15, 2000, at Bohemia, New York;
- yy. April 16, 2000, at Mastic Beach, New York;
- zz. April 22, 2000, at Rockville Centre, New York;
- aaa. April 27 and 28, 2000, at Tom's River, New Jersey;
- bbb. April 29, 2000, at Dingman's Ferry, Pennsylvania; and
- ccc. April 30, 2000, at Blue Bell, Pennsylvania.

5. On May 5, 6 and 7, 2000, at Wilmington, Delaware, respondent Emilia W. Zerbini, doing business as Maya and Her French Poodles, operated as an "exhibitor" for Hamid Circus Royale, Northfield, New Jersey, as that term is defined in the Regulations, without having obtained a license from the Secretary to do so.

6. On November 23, 1999, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to maintain an adequate program of veterinary care that included employment of an attending veterinarian, and regularly scheduled visits.

7. On November 23, 1999, APHIS inspected respondent's animals, records and

mobile or traveling housing facilities, and found that respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to administer a heartworm preventative to her animals regularly, as prescribed in veterinary care program, and retained in use veterinary medication (pyrantel pamoate) that expired in 1997.

8. On November 23, 1999, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to maintain an adequate program of veterinary care that included a mechanism of direct and frequent communication with the attending veterinarian on matters of animal health.

9. On November 23, 1999, APHIS inspected respondent's housing facilities for dogs, and found that respondent failed to comply with the requirements for indoor, sheltered, and mobile or traveling housing facilities:

a. Respondents failed to provide sufficient ventilation in housing facilities for dogs, to provide for the health and well-being of dogs and to minimize odors and ammonia levels; and

b. Respondents failed to ensure that housing facilities for dogs were lighted well enough to permit inspection, and observation of the dogs housed therein.

10. On November 23, 1999, APHIS inspected respondent's facility and animals, and found that respondent failed to comply with the general requirements for housing dogs:

a. Respondent housed at least one dog (Brandy) in an enclosure that did not provide the animal with sufficient floor space; and

b. Respondent housed dogs in a primary enclosure that was not constructed and maintained so as to contain the dogs securely, and specifically, the enclosure was constructed in such a way as to allow a dog contained therein to stick its head and neck outside of the enclosure.

11. On May 19, 2000, APHIS inspected respondent's animals, records and mobile or traveling housing facilities and animals, and found that respondent failed to maintain an adequate program of veterinary care that included employment of an attending veterinarian, and regularly scheduled visits.

12. On May 19, 2000, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to administer a heartworm preventative to her animals regularly, as prescribed in veterinary care program.

13. On May 19, 2000, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to have dogs

wormed quarterly, as prescribed in veterinary care program.

14. On May 19, 2000, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to have fecal tests performed quarterly.

15. On May 19, 2000, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to have attending veterinarian examine skin growth on one dog (Dolly).

16. On May 19, 2000, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease and injuries, and specifically, respondent failed to have animals' nails trimmed.

17. On May 19, 2000, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to have arthritic puppy treated by attending veterinarian.

18. On May 19, 2000, APHIS inspected respondent's animals, records and housing facilities, and found that respondent failed to comply with the requirements for indoor, sheltered, and mobile or traveling housing facilities:

a. Respondents failed to provide sufficient ventilation in housing facilities for dogs, to provide for the health and well-being of dogs and to minimize odors and ammonia levels; and

b. Respondents failed to ensure that housing facilities for dogs were lighted well enough to permit inspection, and observation of the dogs housed therein.

19. On May 19, 2000, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to comply with the housing requirements for dogs:

a. Respondent housed at least one dog (Dolly) in an enclosure that did not provide the animal with sufficient space.

20. On May 19, 2000, APHIS inspected respondent's animals, records and mobile or traveling housing facilities, and found that respondent failed to comply with the primary conveyance requirements:

a. Respondent failed to maintain the interior of the animal cargo space clean; and

b. Respondent failed to construct and maintain the animal cargo space in a manner that protects the health and well-being of the animals at all times, and ensures their safety and comfort.

21. On May 19, 2001, APHIS inspected respondent's records, and found that respondent failed to make, keep and maintain full and correct records concerning each dog acquired by respondent.

CONCLUSIONS OF LAW

1. On forty-three dates between January 28, 1999, and May 21, 2000, respondent Emilia W. Zerbini, doing business as Maya and Her French Poodles, operated as an "exhibitor" for Circus Maximus, Inc., in thirteen locations without having obtained a license from the Secretary to do so, in willful violation of section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

2. On fifty-seven dates between February 5, 2000, and April 30, 2000, respondent Emilia W. Zerbini, doing business as Maya and Her French Poodles, operated as an "exhibitor" for Yankee Doodle Circus, without having obtained a license from the Secretary to do so, in willful violation of section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

3. On May 5, 6 and 7, 2000, respondent Emilia W. Zerbini, doing business as Maya and Her French Poodles, operated as an "exhibitor" for Hamid Circus Royale, without having obtained a license from the Secretary to do so, in willful violation of section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

4. On November 23, 1999, respondent failed to maintain an adequate program of veterinary care that included employment of an attending veterinarian, and regularly scheduled visits, in willful violation of section 2.40(a)(1) of the Regulations (9 C.F.R. § 2.40(a)(1)).

5. On November 23, 1999, respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to administer a heartworm preventative to her animals regularly, as prescribed in veterinary care program, and retained in use veterinary medication (pyrantel pamoate) that expired in 1997, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

6. On November 23, 1999, respondent failed to maintain an adequate program of veterinary care that included a mechanism of direct and frequent communication with the attending veterinarian on matters of animal health, in willful violation of section 2.40(b)(3) of the Regulations (9 C.F.R. § 2.40(b)(3)).

7. On November 23, 1999, respondent failed to provide sufficient ventilation in housing facilities for dogs, to provide for the health and well-being of dogs and to minimize odors and ammonia levels, in willful violation of section 2.100(a) of the Regulations (9 C.F.R. § 2.100), and sections 3.2(b), 3.3(b), and 3.5(b) of the Standards (9 C.F.R. §§ 3.2(b), 3.3(b), 3.5(b)).

8. On November 23, 1999, respondent failed to ensure that housing facilities for dogs were lighted well enough to permit inspection, and observation of the dogs housed therein, in willful violation of section 2.100(a) of the Regulations (9 C.F.R.

§ 2.100), and sections 3.2(c), 3.3(c), and 3.5(c) of the Standards (9 C.F.R. §§ 3.2(c), 3.3(c), 3.5(c)).

9. On November 23, 1999, respondent housed at least one dog (Brandy) in an enclosure that did not provide the animal with sufficient floor space, in willful violation of section 2.100(a) of the Regulations (9 C.F.R. § 2.100), and section 3.6(c) of the Standards (9 C.F.R. § 3.6(c)).

10. On November 23, 1999, respondent housed dogs in a primary enclosure that was not constructed and maintained so as to contain the dogs securely, and specifically, the enclosure was constructed in such a way as to allow a dog contained therein to stick its head and neck outside of the enclosure, in willful violation of section 2.100(a) of the Regulations (9 C.F.R. § 2.100), and section 3.6(a)(2)(iii) of the Standards (9 C.F.R. § 3.6(a)(2)(iii)).

11. On May 19, 2000, respondent failed to maintain an adequate program of veterinary care that included employment of an attending veterinarian, and regularly scheduled visits, in willful violation of section 2.40(a)(1) of the Regulations (9 C.F.R. § 2.40(a)(1)).

12. On May 19, 2000, respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to administer a heartworm preventative to her animals regularly, as prescribed in veterinary care program, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

13. On May 19, 2000, respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to have dogs wormed quarterly, as prescribed in veterinary care program, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

14. On May 19, 2000, respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to have fecal tests performed quarterly, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

15. On May 19, 2000, respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease, and specifically, respondent failed to have attending veterinarian examine skin growth on one dog (Dolly), in violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

16. On May 19, 2000, respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control disease and injuries, and specifically, respondent failed to have animals' nails trimmed, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

17. On May 19, 2000, respondent failed to maintain an adequate program of veterinary care that included the use of appropriate methods to prevent and control

disease, and specifically, respondent failed to have arthritic puppy treated by attending veterinarian, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

18. On May 19, 2000, respondent failed to provide sufficient ventilation in housing facilities for dogs, to provide for the health and well-being of dogs and to minimize odors and ammonia levels, in willful violation of section 2.100(a) of the Regulations (9 C.F.R. § 2.100), and sections 3.2(b), 3.3(b), and 3.5(b) of the Standards (9 C.F.R. §§ 3.2(b), 3.3(b), 3.5(b)).

19. On May 19, 2000, respondent failed to ensure that housing facilities for dogs were lighted well enough to permit inspection, and observation of the dogs housed therein, in willful violation of section 2.100(a) of the Regulations (9 C.F.R. § 2.100), and sections 3.2(c), 3.3(c), and 3.5(c) of the Standards (9 C.F.R. §§ 3.2(c), 3.3(c), 3.5(c)).

20. On May 19, 2000, respondent housed at least one dog (Dolly) in an enclosure that did not provide the animal with sufficient space, in willful violation of section 2.100(a) of the Regulations (9 C.F.R. § 2.100), and section 3.6(c) of the Standards (9 C.F.R. § 3.6(c)).

21. On May 19, 2000, respondent failed to maintain the interior of animal cargo space clean, in willful violation of section 2.100(a) of the Regulations (9 C.F.R. § 2.100), and section 3.15(g) of the primary conveyance Standards (9 C.F.R. § 3.15(g)).

22. On May 19, 2000, respondent failed to construct and maintain animal cargo space in a manner that protects the health and well-being of the animals at all times, and ensures their safety and comfort, in willful violation of section 2.100(a) of the Regulations (9 C.F.R. § 2.100), and section 3.15(a) of the primary conveyance Standards (9 C.F.R. § 3.15(a)).

23. On May 19, 2001, respondent failed to make, keep and maintain full and correct acquisition records concerning each dog, in willful violation of section 2.75(a)(1) of the Regulations (9 C.F.R. § 2.75(a)(1)).

ORDER

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.

2. Respondent is assessed a civil penalty of \$8,250.

3. Respondent's animal welfare license (number 58-C-488) is revoked.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

[This Decision and Order became final June 19, 2002.-Editor]
